

**Introduced by Senator Lowenthal**

February 24, 2006

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An act to add Section 40724.8 to the Health and Safety Code, relating to air pollution.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1601, as introduced, Lowenthal. Marine ports: emissions.

(1) Existing law designates air pollution control districts and air quality management districts as having the primary responsibility for the control of air pollution from all sources other than vehicular sources. Existing law also designates the State Air Resources Board as the state entity responsible for the coordination and review of all levels of government in their efforts to control air pollution. Existing law imposes certain restrictions on truck idling at marine terminals and ports.

This bill would require a marine port to require, as an express condition of any approved new lease or significantly renegotiated existing lease, as defined, that the lessee use best available control technology (BACT) to reduce particulate matter (PM) and nitrous oxide (NOx) emissions from specified source categories. The bill would require a marine port, if, despite compliance with the above, NOx or PM emissions at a marine port continue to increase, to require as an express condition of the lease that the lessee offset any increase with a further reduction in emissions of the same pollutant from operations at the leased property or from other emissions sources at the marine port that are not otherwise required by the bill to be reduced through the use of BACT. The bill would require, on or before June 1, 2007, each district having jurisdiction over the area in which a marine port is located to develop and publish, in consultation with state board, BACT guidelines aimed at reducing PM and NOx

emissions from the specified source categories, and to determine what measures constitute BACT for each source. The bill would require each district, for every year thereafter, in consultation with the state board, to update its BACT determinations for each source category. The bill would require each district, upon adoption of any BACT determination, to submit the determination to the state board for approval. The bill would require the state board to take action upon the BACT determination within 60 days of the date of submission.

By imposing new duties on districts, this bill would impose a state-mandated local program.

(2)The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) Air pollutants from diesel engines at marine ports can
- 4 significantly affect human health.
- 5 (b) Exhaust fumes from diesel-fueled engines are known to
- 6 cause cancer. A landmark study conducted by the South Coast
- 7 Air Quality Management District, entitled the “Multiple Air
- 8 Toxics Exposure Study II,” determined that over 70 percent of
- 9 the cancer risk from air pollution in the South Coast Air Basin is
- 10 attributable to diesel engine exhaust. The State Air Resources
- 11 Board has made the same finding relative to the entire state.
- 12 (c) Diesel engine exhaust is a significant source of particulate
- 13 matter (PM) emissions. Diesel PM is linked to asthma and other
- 14 respiratory diseases, and to premature death.
- 15 (d) Diesel exhaust is also a significant source of emissions of
- 16 oxides of nitrogen (NOx), which combine with sunlight to create

1 ground level ozone, or smog. Exposure to smog has recently  
2 been connected with decreased lung function growth in children.

3 (e) Many regions of California are not in attainment with  
4 federal ambient air quality standards for ozone and PM,  
5 including, but not limited to, the South Coast Air Basin and the  
6 San Joaquin Valley Air Basin, which have the worst air quality in  
7 the nation. Further, many of these regions are in danger of failing  
8 to meet the federal ambient air quality standards by the dates  
9 required by the federal Clean Air Act (42 U.S.C. Sec. 7401 et  
10 seq.). If these regions fail to reach attainment by the applicable  
11 deadlines, their residents will continue to be exposed to severe  
12 health risks, and the regions risk the loss of billions of dollars in  
13 federal transportation funds and other potential sanctions.

14 SEC. 2. Section 40724.8 is added to the Health and Safety  
15 Code, to read:

16 40724.8. (a) As used in this section, the following terms  
17 have the following meanings, unless the context clearly requires  
18 otherwise:

19 (1) “Best available control technology” or “BACT” means the  
20 most stringent emission limitation or control technique that meets  
21 one of the following criteria:

22 (A) The emission limitation or control technique has been  
23 achieved in practice for the category or class of source.

24 (B) The emission limitation or control technique is contained  
25 in any state implementation plan approved by the United States  
26 Environmental Protection Agency for the category or class of  
27 source. A specific limitation or control technique shall not apply  
28 if the owner or operator of the proposed source demonstrates to  
29 the satisfaction of the executive officer of the applicable air  
30 pollution control district or the state board, or a designee, that the  
31 limitation or control technique is not presently achievable.

32 (C) Any other emission limitation or control technique, found  
33 by the executive officer of the applicable district or the state  
34 board, or a designee, to be technologically feasible for that class  
35 or category of source or for a specific source, and costeffective  
36 compared to measures as listed in the air quality management  
37 plan or rules adopted by the district board.

38 (2) “Significantly renegotiated” means a renegotiation of a  
39 lease to which a marine port is a part of that results in any of the  
40 following:

- 1 (A) A two percent or greater expansion of acreage for terminal  
2 or storage use.
- 3 (B) A two percent or greater increase in TEU.
- 4 (C) A purchase of 10 or more pieces of yard equipment,  
5 including yard tractors, top picks, side picks, rubber tire gantries,  
6 and all other cargo handling equipment.
- 7 (D) A renegotiation or extension of the lease term.
- 8 (E) An adjustment of the compensation per TEU in the lease.
- 9 (3) “Twenty-foot equivalent unit” or “TEU” means a  
10 twenty-foot cargo container.
- 11 (b) All marine ports shall require as an express condition of  
12 any approved new lease or significantly renegotiated existing  
13 lease that the lessee use BACT to reduce PM and NO<sub>x</sub> emissions  
14 from all of the following:
- 15 (1) Ocean-going vessels.
- 16 (2) Harbor craft.
- 17 (3) Cargo handling equipment.
- 18 (4) On-road heavy-duty vehicles.
- 19 (5) Locomotives that operate at or service the leased property.
- 20 (c) If, despite compliance with subdivision (b), NO<sub>x</sub> or PM  
21 emissions at a marine port continue to increase, the marine port  
22 shall require as an express condition of the lease that the lessee  
23 offset any increase with a further reduction in emissions of the  
24 same pollutant from operations at the leased property or from  
25 other emissions sources at the marine port that are not otherwise  
26 required by this section to be reduced through the use of BACT.
- 27 (d) On or before June 1, 2007, each district having jurisdiction  
28 over the area in which a marine port resides shall develop and  
29 publish, in consultation with state board, BACT guidelines aimed  
30 at reducing PM and NO<sub>x</sub> emissions from the pollution sources  
31 listed in subdivision (b), and determine what measures constitute  
32 BACT for each source. Every year thereafter, each district shall,  
33 in consultation with the state board, update its BACT  
34 determinations for each source category. Upon adoption of any  
35 BACT determination by a district, the district shall immediately  
36 submit the determination to the state board for approval. The  
37 state board shall take action upon the BACT determination  
38 within 60 days from the date of submission. BACT  
39 determinations shall become effective on either of the following:

1 (1) Upon approval by the state board with a finding that the  
2 determination meets the requirements for BACT.

3 (2) Sixty days after the date of submittal of the determination  
4 to the state board, if no action is taken by the state board on the  
5 BACT determination.

6 SEC. 3. If the Commission on State Mandates determines that  
7 this act contains costs mandated by the state, reimbursement to  
8 local agencies and school districts for those costs shall be made  
9 pursuant to Part 7 (commencing with Section 17500) of Division  
10 4 of Title 2 of the Government Code.